

United States District Court

FOR THE
NORTHERN DISTRICT OF CALIFORNIA
CRIMINAL DIVISION
VENUE: SAN FRANCISCO

FILED

2011 JUL -7 P 3:48

RICHARD W. BIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIF.

UNITED STATES OF AMERICA,

v.

ROBERT G. TUNNELL, JR.,

CR 11 0463

CRB

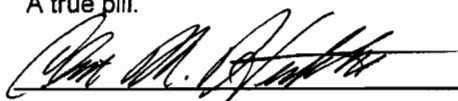
E-210

DEFENDANT.

INDICTMENT

18 U.S.C. § 1341- Mail Fraud
18 U.S.C. § 1343-Wire Fraud
18 U.S.C. § 1957-Money Laundering

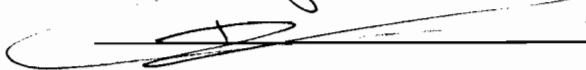
A true bill.



Foreman

Filed in open court this 7 day of

July, 2011

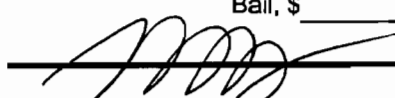


Arenda Tolbert

Clerk

NO PROCESS

Bail, \$



Maria Elena James
United States Chief Magistrate Judge

7-7-11

CR 11-463CRB

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT

BY: ☐ INFORMATION ☒ INDICTMENTMatter Sealed: ☐ Juvenile ☐ Other than Juvenile
☐ Pre-Indictment Plea ☐ Superseding ☐ Defendant Added
☐ Indictment ☐ Charges/Counts Added
☐ Information

Name of District Court, and/or Judge/Magistrate Location (City)

UNITED STATES DISTRICT COURT Northern California (SF)
DISTRICT OF Divisional OfficeName and Office of Person
Furnishing Information on
THIS FORM Melinda Haag
☐ U.S. Atty ☐ Other U.S. Agency
Phone No.Name of Asst.
U.S. Attorney Doug Sprague
(if assigned)

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)
Federal Bureau of Investigation☐ person is awaiting trial in another Federal or State Court
(give name of court)☐ this person/proceeding transferred from another district
per (circle one) FRCP 20, 21 or 40. Show District☐ this is a reprosecution of charges
previously dismissed which were
dismissed on motion of:☐ U.S. Atty ☐ Defense☐ this prosecution relates to a
pending case involving this same
defendant. (Notice of Related
Case must still be filed with the
Clerk.)☒ prior proceedings or appearance(s)
before U.S. Magistrate Judge
regarding this defendant were
recorded underSHOW
DOCKET NO.MAG. JUDGE
CASE NO.

3 11 70690 EDL

Place of
offense San Francisco County

CASE NO.

USA vs.

Defendant: Robert G. Tunnell, Jr.

Address:

☐ Interpreter Required Dialect:Birth Date 6-11-1979 ☒ Male ☐ Alien
☐ Female (if applicable)

Social Security Number

DEFENDANT

Issue: ☐ Warrant ☐ Summons

Location Status:

Arrest Date 6/23/2011 or Date Transferred to Federal Custody☐ Currently in Federal Custody☐ Currently in State Custody☐ Writ Required☒ Currently on bond☐ Fugitive

Defense Counsel (if any): Ed Swanson

☐ FPD ☐ CJA ☒ RET'D☐ Appointed on Target Letter☐ This report amends AO 257 previously submitted

OFFENSE CHARGED - U.S.C. CITATION - STATUTORY MAXIMUM PENALTIES - ADDITIONAL INFORMATION OR COMMENTS

Total # of Counts 21

Set	Title & Section/Offense Level (Petty = 1 / Misdemeanor = 3 / Felony = 4)	Description of Offense Charged	Count(s)
	SEE ATTACHED		

United States v. Robert G. Tunnell, Jr.
Attachment to Penalty Sheet

MAXIMUM PENALTIES (Each Count)

Counts One through Seven: (Title 18, United States Code, Section 1341 – Mail Fraud)

Imprisonment: 20 years

Fine: \$250,000 (or twice the value of the property involved in the offense,
whichever is greater)

Supervised Release: 3 years

Special Assessment: \$100

Restitution: To be determined by the Court

Counts Eight through Twenty: (Title 18, United States Code, Section 1343 – Wire Fraud)

Imprisonment: 20 years

Fine: \$250,000 (or twice the value of the property involved in the offense,
whichever is greater)

Supervised Release: 3 years

Special Assessment: \$100

Restitution: To be determined by the Court

Count Twenty-One: (Title 18, United States Code, Section 1957 - Money Laundering)

Imprisonment: 10 years

Fine: \$250,000 (or twice the amount of the criminally derived property
involved in the transaction)

Supervised Release: 3 years

Special Assessment: \$100

Restitution: To be determined by the Court

MELINDA HAAG (CSBN 132612)
United States Attorney

FILED
2011 JUL -7 P 3:48
RICHARD W. WIEDEMANN
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CRB

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROBERT G. TUNNELL, JR.,

Defendant.

CR 11 0463
No. CR

VIOLATIONS: Title 18, United States Code, Section 1341—Mail Fraud; Title 18, United States Code, Section 1343—Wire Fraud; Title 18, United States Code, Section 1957—Money Laundering; Forfeiture Allegation (18 U.S.C. §§ 982(a)(1), 982(a)(3)(E, F), and 28 U.S.C. § 2461(c))

INDICTMENT

The Grand Jury charges:

Introductory Allegations

1. Defendant, Robert G. Tunnell, Jr. ("TUNNELL"), was a former attorney who subsequently held himself out as a highly successful investor. TUNNELL operated his investment programs under several names, including TCO International LLC, TCO International China Fund, KARMAH, and various iterations of those names. TUNNELL maintained accounts at various financial institutions, as defined in Title 31, United States Code, Section 5312, including Bank of America in San Francisco and Rosenthal Collins Group in Chicago, Illinois. TUNNELL's principal place of business for his investment operations was his residence at 550 Battery Street, "Suite" 2001, San Francisco, California.

INDICTMENT

1 2. TUNNELL solicited individuals to have him to manage their investments, and
2 many individuals provided substantial amounts of money to TUNNELL for him to invest for
3 them. From at least as early as January 2006 until his arrest on June 23, 2011, TUNNELL
4 obtained approximately \$10 million from investors, most of whom were family members or
5 personal friends.

6 3. During that time period, TUNNELL consistently misrepresented to his investors,
7 among other things, that he was achieving steady gains in his investors' accounts based on his
8 conservative, low-risk investments. In fact, however, TUNNELL used his investors' money to
9 engage in commodities trading and other risky trading activity, through which he lost
10 approximately \$7 million of his investors' money. TUNNELL used most of the remaining
11 money to repay investors who requested distributions. In short, from at least as early as January
12 2006 through June 2011, TUNNELL operated a Ponzi scheme.

13 The Scheme to Defraud

14 4. In furtherance of his scheme, and to induce individuals to invest with him and not
15 to withdraw funds once invested, TUNNELL made many material misrepresentations to potential
16 and actual investors and omitted many material facts from them, including the following:

17 a. TUNNELL intentionally failed to disclose that in 2001 he had resigned
18 from the State Bar of California with charges pending, including charges that TUNNELL stole
19 approximately \$300,000 from his law firm and diverted it to his personal trading account;

20 b. TUNNELL represented to investors that he would invest and had invested
21 their funds in a "conservative", "low risk", "safe", and "cautious" manner, and that his investors'
22 funds were "safe" and "guaranteed";

23 c. TUNNELL falsely told investors that he invested money as a favor,
24 because he liked to help people, that he was highly successful as an investor, and that he would
25 not and did not receive any financial gain for doing so;

26 d. TUNNELL failed to inform some investors that he would use their money
27 to trade commodities;

28 e. TUNNELL failed to inform investors that he would use their money to pay

1 off other investors;

2 f. TUNNELL falsely claimed that he had a significant financial investment
3 in, an ownership interest in, and the opportunity for ownership interests in business entities in
4 China;

5 g. TUNNELL assured investors they could withdraw any or all of their
6 money at any time without penalty;

7 h. TUNNELL consistently and falsely reported gains to his investors;

8 i. TUNNELL failed to inform investors that the gains he reported were not
9 based on the actual performance of his investments; and

10 j. In an effort to reassure investors that their money was secure and to
11 dissuade investors from withdrawing investment funds from him, TUNNELL created false
12 documents which grossly overstated his total assets and net worth and understated how much
13 money he owed to other investors.

14 5. It was further part of TUNNELL's scheme to defraud that he sent regular account
15 updates to investors in which he consistently and falsely reported gains.

16 6. It was further part of TUNNELL's scheme to defraud that he paid investors who
17 sought to redeem some or all of their investments by liquidating other investors' contributions,
18 and he did not tell investors that he was doing so.

19 7. It was further part of TUNNELL's scheme to defraud that he dissuaded investors
20 from withdrawing funds by falsely claiming his investment return rates were better than other,
21 more conservative investment options, including educational accounts, and by falsely claiming
22 that investors would have to pay significant capital gains taxes, when, in fact, TUNNELL already
23 had lost most of the investors' money when he made these claims.

24 8. As he lost more and more of his investors' money, TUNNELL's solicitation
25 efforts for additional investments increased and his false misrepresentations became more
26 exaggerated, including as follows:

27 a. In two consecutive months in or about mid-2007, TUNNELL lost more
28 than \$800,000 trading, bringing his trading account balances to less than \$20,000. A few days

1 later, however, he reported to investor S.R. that her accounts had gained approximately 2% in the
2 prior month and remained on pace to gain more than 20% for the year. TUNNELL told S.R. that
3 she needed to invest even more money with TUNNELL so she could achieve even greater
4 returns.

5 b. In consecutive months in or about mid-2010, TUNNELL lost more than
6 \$800,000 in his trading accounts, bringing the balance in those accounts to less than \$100,000.
7 During that time, TUNNELL persuaded K.C. and D.C. to send TUNNELL an additional
8 \$200,000 to \$300,000, and TUNNELL guaranteed an 11% annual return that he promised to
9 generate by his "steady, cautious" strategy. After K.C. and D.C. wired \$250,000 to TUNNELL,
10 TUNNELL used a portion of these funds to repay an earlier investor.

11 c. Later in 2010, when TUNNELL lost more than \$1 million in his trading
12 accounts, TUNNELL solicited more money from E.G., K.C., and D.C., promising a guaranteed
13 12% return to E.G. and a guaranteed 11% return to K.C. and D.C.

14 9. In furtherance of his scheme, TUNNELL failed to disclose that he used investors'
15 money to pay off other investors and other liabilities, including as follows:

16 a. On or about April 16, 2007, TUNNELL used investor S.R.'s money to pay
17 \$60,308 to a bank. The \$60,308 payment was the last installment of a debt TUNNELL owed to
18 the bank after the bank successfully sued TUNNELL for failing to repay a \$287,000 loan.

19 b. On or about July 1, 2008, TUNNELL used a \$50,000 investment from
20 M.M. to fund a \$50,000 check to investor M.J.O.

21 c. On or about February 23, 2009, TUNNELL used \$99,000 of a \$240,000
22 investment from J.Z. to issue checks to investors G.W., K.W., J.D., and L.D.

23 d. On or about May 28, 2010, TUNNELL used a \$40,000 investment from
24 M.H. to fund a \$40,000 check to investor S.R.

25 e. In or about August 2010, TUNNELL used investments from E.G., G.W.,
26 and K.W. to pay approximately \$182,000 to investors M.H., S.R., N.B., J.Z., D.S., and R.S.

27 f. On or about February 15, 2011, TUNNELL used a \$100,000 investment
28 from M.J.O. to write a \$62,500 check to investor S.R.

10. In furtherance of his scheme, TUNNELL often warned his investors that his investment programs were “proprietary” and “confidential” and that they should not discuss their investments with TUNNELL with anyone else. Similarly, TUNNELL lied to his investors about personal matters to try to separate his victims and keep them from communicating with each other.

COUNTS ONE THROUGH SEVEN: (18 U.S.C. § 1341 – Mail Fraud)

11. Paragraphs 1 through 10 are realleged and incorporated herein by reference.

12. On or about the dates set forth below, in the Northern District of California and elsewhere, the defendant,

ROBERT G. TUNNELL, JR.,

for the purpose of executing his material scheme and artifice to defraud, and to obtain money and property from his victims by means of materially false and fraudulent pretenses, representations, and promises, and by material omissions, did knowingly cause the mail matter listed below to be deposited, sent, and delivered by the United States Postal Service and interstate carrier:

COUNT	DATE OF MAILING	ITEM MAILED
1	September 18, 2007	Letter to E.G. acknowledging receipt of \$500,000
2	November 9, 2007	Letter to G.W. and K.W. acknowledging receipt of \$300,000
3	July 8, 2008	Letter to E.G. acknowledging receipt of a total of \$1,000,000 in funds
4	November 11, 2008	“Certificate of Investment Deposit” dated November 3, 2008, reflecting additional \$800,000 investment by E.G.
5	January 15, 2009	Note and enclosed “Certificate of Investment Deposit” dated December 30, 2008, reflecting additional \$400,000 investment by E.G.
6	June 7, 2010	“Investment Note” reflecting \$1,450,372 investment by E.G.
7	January 12, 2011	“Investment Note” reflecting additional \$250,000 investment by E.G.

All in violation of Title 18, United States Code, Section 1341.

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COUNTS EIGHT THROUGH TWENTY: (18 U.S.C. § 1343 – Wire Fraud)

13. Paragraphs 1 through 10 are realleged and incorporated herein by reference.

14. On or about the dates set forth below, in the Northern District of California and elsewhere, the defendant,

ROBERT G. TUNNELL, JR.,

for the purpose of executing his material scheme and artifice to defraud, and to obtain money and property from his victims by means of materially false and fraudulent pretenses, representations, and promises, and by material omissions, did knowingly transmit and cause to be transmitted the following wire communications in interstate commerce, all processed by the Fedwire Funds Transfer System in New Jersey:

COUNT	DATE OF WIRE	ITEM WIRED
8	April 11, 2007	\$150,000 from S.R. to TUNNELL
9	May 14, 2007	\$100,000 from M.J.O. to TUNNELL
10	June 29, 2007	\$50,000 from M.J.O. to TUNNELL
11	July 23, 2007	\$500,000 from E.G. to TUNNELL
12	September 18, 2007	\$500,000 from E.G. to TUNNELL
13	October 5, 2007	\$200,000 from S.R. to TUNNELL
14	October 14, 2008	\$140,000 from M.J.O. to TUNNELL
15	November 3, 2008	\$800,000 wire from E.G. to TUNNELL
16	December 29, 2008	\$400,000 from victim E.G. to TUNNELL
17	February 23, 2009	\$240,000 from victim J.Z. to TUNNELL
18	August 5, 2010	\$150,000 from victim E.G. to TUNNELL
19	December 17, 2010	\$250,000 from victim E.G. to TUNNELL
20	April 7, 2011	\$50,000 from victim M.M. (via her family trust) to TUNNELL

All in violation of Title 18, United States Code, Section 1343.

COUNT TWENTY-ONE: (18 U.S.C. § 1957 – Money Laundering)

15. Paragraphs 1 through 10 are realleged and incorporated herein by reference.

16. On or about November 3, 2008, in the Northern District of California and

elsewhere, the defendant,

ROBERT G. TUNNELL, JR.,

did knowingly engage and attempt to engage in a monetary transaction in criminally derived property of a value greater than \$10,000, namely, the wire transfer of \$800,000 of E.G.'s funds from one of TUNNELL's accounts at Bank of America in San Francisco to TUNNELL's account with Rosenthal Collins in Chicago, Illinois, those funds having been derived from specified unlawful activity, namely, wire fraud, in violation of Title 18, United States Code, Section 1343.

All in violation of Title 18, United States Code, Section 1957.

FORFEITURE ALLEGATION: (18 U.S.C. §§ 982(a)(1), 982(a)(3)(E, F), and 28 U.S.C. § 2461(c))

17. The allegations of Counts One through Twenty of this Indictment are realleged and fully incorporated herein for the purpose of alleging forfeiture pursuant to the provisions of 18 U.S.C. §§ 982(a)(1), 982(a)(3)(E, F), and 28 U.S.C. § 2461(c).

18. Upon a conviction of any of the offenses alleged in Counts One through Twenty, the defendant,

ROBERT G. TUNNELL, JR.,

shall forfeit to the United States all property constituting and derived from proceeds traceable to that offense, including but not limited to a sum of money equal to the amount of proceeds obtained as a result of the offense.

19. If any of said property, as a result of any act or omission of the defendant:

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred to, sold to, or deposited with a third person;

(c) has been placed beyond the jurisdiction of the Court;

(d) has been substantially diminished in value; or

(e) has been commingled with other property which cannot be subdivided without

difficulty; any and all interest defendant has in other property shall be vested in the United States and forfeited to the United States pursuant to Title 21, United States Code, Section 853(p), as

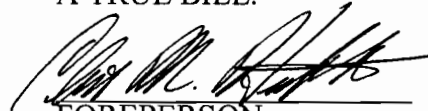
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incorporated by Title 28, United States Code, Section 2461(c) and Rule 32.2 of the Federal Rules of Criminal Procedure.

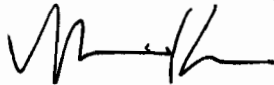
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DATED: July 2, 2011

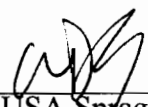
A TRUE BILL.


FOREPERSON

MELINDA HAAG
United States Attorney



MIRANDA KANE
Chief, Criminal Division

(Approved as to form: )
AUSA Sprague